

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

YUKI YAMASHIRO
P.O. BOX 762
Rialto, CA 92377

Applicant for Psychiatric Technician License

Respondent.

Case No. PT-2007-1566

OAH No. 2009100106

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on March 31, 2010.

IT IS SO ORDERED this 1st day of March, 2010.



John P. Vertido, L.V.N.
President

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YUKI YAMASHIRO, also known as
YUKI GINEZ,

Applicant/Respondent.

Case No. PT-2007-1566

OAH No. 2009100106

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on December 1, 2009.

Gloria A. Barrios, Supervising Deputy Attorney General, Department of Justice, represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California

Respondent Yuki Yamashiro represented himself and was present throughout the administrative hearing.

The matter was submitted on December 1, 2009.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 22, 2009, the statement of issues in this matter was signed on behalf of complainant Teresa Bello-Jones, J.D., M.S.N., R.N., the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (the Board), Department of Consumer Affairs, State of California. The statement of issues sought the denial of the application filed by applicant/respondent Yuki Yamashiro (Yamashiro or respondent) for the issuance of a psychiatric technician's license on the basis of Yamashiro's April 2000 misdemeanor conviction for domestic violence and his 1992 misdemeanor conviction for reckless driving with alcohol involvement.

The statement of issues and other required jurisdictional documents were served on Yamashiro, who timely filed a notice of defense.

The record in this disciplinary proceeding was opened on December 1, 2009. At the outset of the hearing, Yamashiro advised the administrative law judge and counsel for complainant that his attorney, Carroll M. Lawson, was unexpectedly required to be in court in Riverside County in another matter. Yamashiro asked if he could proceed without counsel. The administrative law judge advised Yamashiro of his right to have counsel present at the hearing, that the hearing would be continued until his attorney could appear, and that he could waive his right to be represented by counsel. The administrative law judge advised Yamashiro of the several factual issues that were framed by the statement of issues. Yamashiro was given the opportunity to speak with his attorney before making any decision. Yamashiro elected to represent himself and he thereafter freely, voluntarily and knowingly waived his right to be represented by counsel in this administrative proceeding. Counsel for complainant joined in the waiver of counsel.

Thereafter, jurisdictional documents were presented, opening statements were presented, documentary evidence was produced, sworn testimony was received, closing arguments were given, the record was closed, and the matter was submitted.

The License Application

2. On December 20, 2007, Yamashiro signed an Application for Psychiatric Technician Licensure. In that application, Yamashiro certified that he attended a psychiatric technician program at San Bernardino Valley College from January 16, 2007, through December 20, 2007, and that he graduated from that program.

In response to a question asking if he had ever been convicted of any misdemeanor or felony, Yamashiro admitted that he was convicted of domestic violence in February 2000, and that he was convicted of alcohol-related reckless driving in February 1992.

The Board received Yamashiro's application on December 24, 2007.

On July 30, 2008, Enforcement Analyst Angela Smith requested Yamashiro to provide the Board with a signed, detailed explanation of the events that resulted in his convictions and to provide the Board with certified copies of arrest reports and court documents related to those convictions. In a seven-page letter dated August 11, 2008, Yamashiro set forth his version of the events giving rise to his convictions.

By letter dated September 10, 2008, Program Manager Alice Delvey-Williams advised Yamashiro that his application for licensure had been denied and of his right to appeal that decision and request a hearing.

The statement of issues was filed in May 2009, approximately 15 months after Yamashiro filed his application for licensure and approximately eight months after the Board

notified Yamashiro that his application had been denied. The reason for this delay was not explained. This administrative proceeding followed.

Yamashiro's Convictions

3. On June 2, 1992, Yamashiro was convicted on his plea of nolo contendere of violating Vehicle Code section 23103.5 (reckless driving with alcohol involvement), a misdemeanor, in the Superior Court of California, County of Kern, East Division, Ridgecrest Branch, in Case No. J241481. The remaining charges filed against Yamashiro were dismissed upon entry of his plea.

The court suspended imposition of sentence and placed Yamashiro on three years summary probation. Terms and conditions of probation required Yamashiro to submit to chemical tests to determine his blood alcohol content upon request by any peace officer or probation officer, to not drive with any measurable amount of alcohol in his blood, to serve one day in custody (with credit being given for one day served), and to pay fines and fees in the approximate amount of \$730. Probation was later modified to permit Yamashiro to provide 50 hours of community service in lieu of paying \$530 in fines.

Yamashiro successfully completed probation.

4. On April 26, 2000, Yamashiro was convicted on his plea of guilty of violating Penal Code section 243, subdivision (e)(1) (battery upon a domestic cohabitant), a misdemeanor, in the Superior Court of California, County of San Bernardino, Central Division, in Case No. MSB046931.

The court withheld pronouncement of judgment and placed Yamashiro on three years summary probation. Terms and conditions of probation required Yamashiro to violate no laws (minor traffic offenses excluded), to serve 30 days in custody in a weekender program (with credit given for five days previously served), to pay fines and fees of approximately \$110 (which was included in the time in custody), and to attend and complete an anger management diversion program by May 25, 2001.

Yamashiro successfully completed probation.

On January 11, 2005, the court granted Yamashiro's petition to withdraw his guilty plea, to enter a plea of not guilty, and for dismissal of the charges. Yamashiro's conviction was expunged under Penal Code section 1203.4, which was documented in the court records.

Circumstances of the Offenses

5. Sometime in 1992, Yamashiro and a friend had dinner and drinks. After dinner, Yamashiro believed he was sufficiently sober to drive his friend's truck safely. While driving home, Yamashiro struck the rear of another vehicle while making a left turn. The police responded to the scene, spoke with Yamashiro, gave him a field sobriety test (which Yamashiro believed he passed), and administered a breath test, after which

Yamashiro was arrested and booked for driving under the influence. Yamashiro was released after spending a brief period in custody. Yamashiro's blood alcohol level was not established, but it was low enough to warrant an offer of a "wet reckless" conviction¹ in lieu of prosecuting Yamashiro on a driving under the influence charge. Yamashiro had very little recollection of the event giving rise to this conviction. A police report was not available.

6. On the evening of February 18, 2000, Yamashiro and several co-employees attended a function after work and drank beer. Yamashiro was living with Mary R. and their six-year-old daughter at the time. Based on previous experiences, Yamashiro knew that Mary R. did not like it when Yamashiro got together with friends after work to socialize, but he did not call Mary R. that evening to tell her that he would be home late. Mary R. had called the police and had accused Yamashiro of misconduct before in similar circumstances.

When Yamashiro arrived home around 2:30 a.m. on February 19, Mary was waiting for him in the living room of their apartment. Harsh words were exchanged. At some point the verbal abuse escalated into minimal physical aggression. Mary R. left the apartment and called the police. Yamashiro remained at the apartment for awhile, and then took their daughter with him in his vehicle as they searched for Mary R. in the neighborhood.

Mary R. contacted the sheriff's department, returned home, and told the investigating officers that Yamashiro had struck her in the face with his fist earlier that evening. She told the investigating officers that Yamashiro refused to let her use the bathroom and that he had been arrested several times before for domestic violence.

Mary R.'s hearsay account of being struck in the face with a fist, as set forth in the incident report, was not corroborated. The investigating officer did not observe any evidence of facial trauma. Mary R. did not ask for medical assistance.

After Yamashiro returned to the apartment, he did not admit or deny that he struck Mary R., although he denied trying to choke her. He told the investigating officer that he put his arm around Mary R.'s neck as a gesture of affection. He denied injuring Mary R.

In this administrative proceeding, Yamashiro admitted that he embraced Mary R. in an effort to calm her down and that at one point during the argument, he put his hand across Mary R.'s mouth in an effort to keep her quiet because she was screaming.

Other Matters

7. Yamashiro was born on April 2, 1967, in Montebello, California. He grew up in Ridgecrest, California. He attended Burroughs High School, but dropped out of high school in his senior year when his parents divorced. He moved to the Inland Empire and attended La Sierra College, where he obtained a GED in 1989.

¹ See Vehicle Code section 23103.5.

Yamashiro held several entry level jobs in his twenties including working as a bagger and night stocker at an Alpha Beta supermarket, working as night guard at a recreational vehicle dealership, working as a warehouseman and stock clerk at Wal-Mart, and working as a stock clerk for a hotel supply company. Yamashiro was never involuntarily terminated from any employment.

Yamashiro separated from Mary R., with whom he had been living for many years, immediately after his arrest for domestic violence. Yamashiro testified the separation took an enormous amount of stress and pressure out of his life and permitted him to pursue other activities. Yamashiro continued to be an important figure in his daughter's life, however. He currently pays child support of \$400 per month, as ordered by the court, he sees his daughter on weekends and has visitation some weeknights, and he very much enjoys her company. His child support payments have never been delinquent. Yamashiro is, by all accounts, a devoted father.

Following his domestic violence conviction, Yamashiro took the advice of his criminal defense attorney (whom he retained in this matter), and he began praying and reading the Bible at least an hour every night. Thus began Yamashiro's involvement in the Seventh Day Adventist Church.

Following his domestic violence conviction, Yamashiro attended San Bernardino Valley College. He obtained an AA degree in Liberal Arts in 2005.

Following his domestic violence conviction, Yamashiro participated in the court-ordered anger management diversion program, which required him to attend a two hour class each week for one year. Yamashiro got so much out of the program that he voluntarily continued attending meetings at his own expense for six months after his completion of the court-ordered program. Yamashiro described in a compelling manner how the domestic violence diversion program made him aware of certain ethnic biases he held that were related to members of the opposite sex, and how what he believed to be his calm response to a particular situation might be misperceived by others as being quite hostile. He discovered that he did not have to react to what others said about him. Although Yamashiro denied engaging in genuine domestic violence the evening he was arrested, he understood through his participation in the domestic violence diversion program how Mary R. easily could have perceived his conduct to be very threatening. Yamashiro also admitted that on the evening of his domestic violence arrest, he went about things "absolutely wrong," that he should have called to let Mary R. know where he was when he made a decision to socialize with his friends, and that he should not have engaged her when she was so angry.

Following his domestic violence conviction, Yamashiro attended a twelve-step recovery program sponsored by his church. He stopped consuming alcoholic beverages. Yamashiro thereafter consumed alcohol on his birthday in April 2005, and he continued to consume alcoholic beverages for approximately a month after that, but he then stopped consuming alcoholic beverages again. Yamashiro has not consumed an alcoholic beverage since June 2005.

In 2005, Yamashiro began employment with Loma Linda University Medical Center (Loma Linda), where he burnishes floors. Many of his friends from church work at Loma Linda and he very much enjoys his employment there. Yamashiro recently received a five-year medallion for his continuous service. As a result of his employment at Loma Linda, Yamashiro came to believe that his calling was in the field of nursing. He sought nurse training at San Bernardino Valley College, and was placed on a "wait list." He then began training as a psychiatric technician.

During his psychiatric technician training, Yamashiro completed the required class work and interned at Patton State Mental Hospital, Canyon Ridge Hospital, the VA Hospital at Loma Linda, the Lanterman Developmental Center, at an elementary school for the developmentally delayed, and at several other public facilities. Yamashiro testified his training and internships taught him a great deal of self-control, how to assess a potentially dangerous situation, and how to respond to threats of violence in an appropriate fashion. During his internships, Yamashiro came into contact with angry patients on several occasions, and he responded in a peaceful and proper fashion each time, never using more force than necessary.

8. Jim Day (Day), a retired insurance agent, has been the Head Elder at the Seventh Day Adventist Church in Highland for 20 years. Day has known Yamashiro for the past ten years. Day knew of the domestic violence incident as a result of counseling Yamashiro and Mary R. after that incident. Day described Yamashiro as a dependable, articulate man of his word, "a beautiful man . . . a Godly man." Day said Yamashiro was continually improving himself and that Yamashiro was a person in whom he placed a great deal of trust. Day testified that Yamashiro often volunteered services for his daughter and her friends through the church.

9. Shannon Small (Small), an accountant at Loma Linda, has known Yamashiro through the church and through their employment at Loma Linda for the last five years. She sees Yamashiro every day at work. Small's youngest son is a good friend of Yamashiro's daughter. Yamashiro disclosed the fact of his domestic violence conviction to Small about a year after they met. In that regard, Yamashiro told Small about a "misunderstanding" that resulted in his conviction, but he did not provide more detail. Small has never observed Yamashiro act in an angry or violent fashion. According to Small, Yamashiro is very honest.

10. Daniel Binus, M.D. (Dr. Binus) received his medical degree from Loma Linda in 2006. The Medical Board of California licensed Dr. Binus to practice medicine in 2007, and he is currently participating in a psychiatric residency at Loma Linda. Dr. Binus testified that he has known Yamashiro through their church for about two years, that Yamashiro is very open to meeting new people, that Yamashiro is generous and enjoys the fellowship the church offers, and that Yamashiro engages in many outdoor activities. Dr. Binus has never seen Yamashiro become angry or lose his temper. He described Yamashiro as a gentle, kind man who demonstrates a great deal care and love for his daughter. Dr. Binus believes Yamashiro is honest and trustworthy.

11. Yamashiro provided a letter written by Mary R. the evening before the hearing in this matter. The letter was received as administrative hearsay, and it supplemented and explained Yamashiro's testimony about his relationship with Mary R., and the effort he has made to be a good ex-husband and a good father. Mary R.'s letter stated that she and Yamashiro had a ten-year relationship, that they had differences, and there was (unspecified) abuse in the relationship, but since their separation they have learned to communicate with one another and they hold no grudges. Mary R. described Yamashiro's educational and vocational activities since their separation, and Mary R. observed that Yamashiro was a good example for their daughter.

Disciplinary Guidelines

12. Business and Professions Code sections 2841.1 and 4501.1 mandate that protection of the public shall be the highest priority for the Board of Vocational Nursing and Psychiatric Technicians in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

To facilitate uniformity of disciplinary orders and to ensure that its disciplinary policies are known, the Board adopted disciplinary guidelines. The guidelines are intended for use by individuals involved in disciplinary proceedings against vocational nurse and psychiatric technician licensees or applicants, including administrative law judges and attorneys, as well as the Board members who review proposed decisions and stipulations and have ultimate authority to make final decisions.

While recognizing that administrative law judges must be free to exercise their discretion, the Board requests that these guidelines be followed to the extent possible and that any departures be noted and explained in the Proposed Decision. The Board requests that matters in extenuation and mitigation, as well as those in aggravation, be fully considered and noted in the Proposed Decision. Of primary importance is the effect the respondent's conduct had or could have had on the health, safety and welfare of California consumers.

In determining whether revocation, suspension or probation should be imposed in a given disciplinary action, the following factors should be considered:

- Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- Actual or potential harm to the public.
- Actual or potential harm to any patient.
- Overall disciplinary record.
- Overall criminal actions taken by any federal, state or local agency or court.

- Prior warnings on record or prior remediation.
- Number and/or variety of current violations.
- Mitigation evidence.
- In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- Time passed since the act(s) or offense(s) occurred.
- If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- Cooperation with the Board and other law enforcement or regulatory agencies.
- Other rehabilitation evidence.

13. For unprofessional conduct in violation of Business and Professions Code section 4521, subdivision (d), the guidelines recommend a maximum sanction of outright revocation and a minimum sanction of revocation, stayed, with two years probation with standard conditions of probation and special conditions as may be appropriate.

Evaluation

14. The statement of issues alleged that Yamashiro was convicted of two substantially related crimes involving conduct that would have been grounds for disciplinary action if Yamashiro had been a licensee.

Even though a domestic violence conviction is not expressly mentioned in the Board's substantial relationship criteria set forth in Title 16, California Code of Regulations, section 2578, there is an obvious relationship between a relatively recent conviction for domestic violence and the qualifications, functions, and duties of a psychiatric technician, since a psychiatric technician must maintain his or her composure in stressful and sometimes dangerous situations and should not resort to any form of violence unless absolutely necessary to protect himself, herself or others.

Title 16, California Code of Regulations, section 2576.6 requires a licensed psychiatric technician to adhere to professional standards including, but not limited to, abstaining from chemical/substance abuse. The existence of a substantial relationship between an alcohol-related reckless driving conviction that is more than 15 years old and the qualifications, functions, and duties of a psychiatric technician is more difficult to understand than a more recent conviction involving domestic violence, particularly when there is compelling evidence that the applicant no longer consumes alcohol.

Complainant argued that since both convictions occurred after Yamashiro had consumed alcohol, a pattern of misconduct involving the misuse of alcohol was demonstrated, and that Yamashiro would not have entered into a 12-step recovery program and become abstinent if he did not think that he had a problem with alcohol. There is some merit to complainant's argument, and it is concluded that there is a substantial relationship between Yamashiro's 1992 conviction for alcohol-related reckless driving, and the qualifications, functions, and duties of a psychiatric technician, when that conviction is considered with the more recent conviction of domestic violence.

15. With regard to the appropriate measure of discipline, an outright denial of Yamashiro's application is not required to protect the public. In reaching this decision, matters in aggravation, extenuation, mitigation and rehabilitation exist.

The reckless driving conviction occurred more than 15 years ago; the conviction itself has a nominal relationship to the qualifications, functions, and duties of a psychiatric technician; it was a misdemeanor conviction, and the underlying collision involved property damage to the rear of another vehicle without personal injury. Yamashiro complied with all terms of his probation for that conviction. Yamashiro no longer consumes alcoholic beverages, and the likelihood of similar misconduct occurring in the future is remote.

The domestic violence conviction occurred more than seven years ago, but it has a more substantial relationship to the qualifications, functions, and duties of a psychiatric technician. Considerable extenuation and mitigation established.² The violence did not begin until Mary R. initiated the incident when Yamashiro came home late after socializing with friends. Yamashiro responded to her aggression. The investigating officer observed no evidence of trauma about Mary R.'s person and she did not seek medical assistance. There was no evidence of a fight or brawl. The living room area was not disturbed. While domestic violence always involves a risk of harm to the public, the absence of injury cannot be overlooked since it is consistent with a lack of intent to cause injury. After his domestic violence conviction, Yamashiro complied with all terms of his probation, including the completion of a domestic violence diversion course. Yamashiro's conviction was ultimately expunged under the provisions of Penal Code section 1203.4. Yamashiro greatly benefited from the domestic violence training, as well as his psychiatric technician training, and it is unlikely that he would engage in unreasonable physical violence if he were licensed. However, any prospective employer should be aware of Yamashiro's history in order to exercise an appropriate level of supervision.

² *Arneson v. Fox* (1980) 28 Cal.3d 440 held that in an administrative disciplinary proceeding, an administrative agency may rely on a plea and the conviction based on that plea to establish a reasonable and substantial relationship to licensed activities. An applicant or licensee may introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation, but an inquiry into the circumstances surrounding the offense should not form the basis of impeaching a prior conviction. Regardless of the various motives which may have impelled the nolo contendere plea, the conviction based thereon stands as conclusive evidence of appellant's guilt of the offense charged.

Complainant argued that Yamashiro evidenced a lack of remorse because he failed to admit his wrongdoing, and suggested that this attitude undercut his claim of rehabilitation and made him a risk if he became licensed. However, based on the evidence as a whole, Yamashiro's consistent refusal to retract his claim of innocence and repent is best understood not as a refusal to acknowledge wrongdoing, but as reinforcing a showing of good character in that Yamashiro refused, in effect, to become a fraudulent penitent to his own advantage.

Yamashiro presented a great deal of evidence to support his rehabilitation since his domestic violence conviction, including his voluntarily leaving of the family home to avoid further conflict, his successful completion of probation, his participation in educational activities that resulted in his obtaining an associate's degree, his involvement in the Seventh Day Adventist Church and its fellowship, his involvement in his daughter's wellbeing and life, his continued gainful employment, and his completion of the psychiatric technician training program, which included many hours of internship in difficult settings. Friends and co-employees corroborated Yamashiro's testimony concerning his peaceful nature and good moral character.

The Appropriate Measure of Discipline

16. Based on the record in this matter, it would not be contrary to the public interest to issue a three year probationary license to Yamashiro. This mandated but relatively brief period of probation will require Yamashiro to, among other matters, notify prospective employers of the reasons he was placed on probation and it will allow the Board to assure itself that Yamashiro is worthy of holding an unrestricted license. Terms and conditions of probation will require Yamashiro's supervision and will require him to comply with probation and submit quarterly reports. Yamashiro will be directed to abstain from the consumption of alcohol, but chemical testing will not be required. Requiring a psychiatric evaluation is not supported by the record. Imposing discipline in excess of a three year probationary license under these terms and conditions would involve punishment and would not better serve to protect the public.

This disciplinary order imposed herein falls squarely within the Board's disciplinary guidelines and within the statute authorizing the issuance of a probationary license in these kinds of matters.

LEGAL CONCLUSIONS

Purpose of License Discipline

1. The main purpose of license discipline is protection of the public through the prevention of future harm and the improvement and rehabilitation of the licensee. It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

Burden and Standard of Proof

2. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. (See, *California Administrative Hearing Practice* (Cont.Ed.Bar 2d ed. 1997), The Hearing Process, §§ 7.51-7.53, pp. 365-367.)

Disciplinary Statutes and Regulations

3. Business and Professions Code section 480 provides in part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime . . .

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. . . .”

4. Business and Professions Code section 4511 provides in part:

“An applicant for a psychiatric technician’s license shall have the following qualifications:

. . .

(d) Have committed no act which, if committed by a licensed psychiatric technician, would be ground for disciplinary action.”

5. Business and Professions Code section 4521 provides in part:

“The board may suspend or revoke a license issued under this chapter for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

. . .

(5) Use any . . . alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license . . .

...

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline”

6. Title 16, California Code of Regulations, section 2576.6 provides in part:

“(b) A licensed psychiatric technician shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:

...

(4) Abstaining from chemical/substance abuse . . .

...

(c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action.”

Substantial Relationship

7. Conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

8. Title 16, California Code of Regulations, section 2578 sets forth the substantial relationship criteria related to a psychiatric technician license. That regulation provides:

“For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed psychiatric technician if to a substantial degree it evidences present or potential unfitness of a licensed psychiatric technician to perform the functions authorized by his license in a manner consistent with the public

health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) Procuring a license by fraud, misrepresentation, or mistake.
- (b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.
- (c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 10, Division 2 of the Business and Professions Code.
- (d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.
- (e) Conviction of a crime involving fiscal dishonesty.
- (f) Any crime or act involving the sale, gift, administration, or furnishing of 'narcotics or dangerous drugs or dangerous devices' as defined in Section 4022 of the Business and Professions Code."

9. It is concluded that Yamashiro's convictions have a substantial relationship to the qualifications, functions and duties of a psychiatric technician, and that the commission of such offenses by a licensee would provide grounds for administrative discipline. (Factual Findings 3, 4 and 12-14, and Legal Conclusions 3-8.)

Rehabilitation

10. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.) In a similar situation, the California Supreme Court observed in *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 744:

"Hall's consistent refusal to retract his claims of innocence and make a showing of repentance appears to reinforce rather than undercut his showing of good character. Precisely because the Committee made clear that Hall's chances for admission would be improved if he demonstrated remorse, we find his refusal to do so indicative of good character rather than the contrary: Hall refused, in effect, to become the fraudulent penitent for his own advantage."

Authority to Issue a Probationary License

11. Business and Professions Code section 4521.1 provides:

“(a) The board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any term of this chapter, but who has met all other requirements for licensure and who has successfully completed the examination for licensure within four years of the date of issuance of the initial license.

(b) Specific terms and conditions may include, but are not limited to, the following:

- (1) Continuing medical, psychiatric, or psychological treatment.
- (2) Ongoing participation in a specified rehabilitation program.
- (3) Abstention from the use of alcohol or drugs.
- (4) Compliance with all provisions of this chapter.

(c)(1) Notwithstanding any other provision of law, and for purposes of this section, when deciding whether to issue a probationary license, the board shall request that an applicant with a dismissed conviction provide proof of that dismissal and shall give special consideration to applicants whose convictions have been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(2) The board shall also take into account and consider any other reasonable documents or individual character references provided by the applicant that may serve as evidence of rehabilitation as deemed appropriate by the board.

(d) The board may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the applicant or licensee.

(e) For purposes of issuing a probationary license to qualified new applicants, the board shall develop standard terms of probation that shall include, but not be limited to, the following:

- (1) A three-year limit on the individual probationary license.
- (2) A process to obtain a standard license for applicants who were issued a probationary license.
- (3) Supervision requirements.
- (4) Compliance and quarterly reporting requirements.”

Cause Exists to Issue a Probationary License

12. Cause exists under Business and Professions Code sections 480, 4511, 4521, and 4521.1 to issue a three year probationary license to Yamashiro, in that Yamashiro was convicted of two substantially related convictions that involved conduct which would have resulted in the imposition of license discipline had Yamashiro been licensed. Yamashiro produced substantial evidence in explanation, extenuation, mitigation and, most importantly, rehabilitation. The terms and conditions of probation are supported by the evidentiary record and will protect the public.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

The application of respondent Yuki Yamashiro (respondent) for licensure as a psychiatric technician is granted on a probationary basis for a period of three years under the following terms and conditions:

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by the respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of himself/herself within thirty (30) days of the effective date of the decision.

If respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

2. COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program.

3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, respondent shall provide a list of all states and territories where he has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which he/she has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if he/she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he/she resides or practices outside of California. The respondent shall provide written notice to the Board within five (5) days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five (5) days, upon his/her return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or when applying for employment in any capacity in any health care profession, respondent shall notify his employer of the probationary status of his license. This notification to respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of his probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if he/she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in his licensed capacity in the state of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, respondent shall obtain approval from the Board of the supervision provided to the respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified

nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at his own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify the respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, respondent shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

11. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times, maintain an active current license with the Board including any period of suspension.

If an initial license must be issued (Statement of Issues), probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two (2) years from the effective date of the Board's decision.

Should respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

12. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

13. LICENSE SURRENDER

During probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, respondent may surrender his/her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A licensee who surrenders his/her

license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

- Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- One (1) year for a license surrendered for a mental or physical illness.

14. VIOLATION OF PROBATION

If respondent violates the conditions of his/her probation, the Board, after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of the respondent's license. If during probation, an accusation or petition to revoke probation has been filed against the respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

15. RESTORATION OF LICENSE

Upon successful completion of probation, respondent's license will be fully restored.

DATED: 12/28/09

A handwritten signature in dark ink, appearing to read 'J. Ahler', followed by the word 'for' written in a cursive script.

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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of the State of California
2 ALFREDO TERRAZAS
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Attorneys for Complainant
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8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. PT-2007-1566

13 **YUKI YAMASHIRO AKA**
14 **YUKI GINEZ**
P.O. Box 762
Rialto, CA 92377

STATEMENT OF ISSUES

Respondent.

16 Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

17 **PARTIES**

18 1. Complainant brings this Statement of Issues solely in her official capacity
19 as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians
20 ("Board"), Department of Consumer Affairs.

21 2. On or about December 24, 2007, the Board received an Application for n
22 Applicant for Psychiatric Technician from Yuki Yamashiro, also known as Yuki Ginez
23 ("Respondent"). On or about December 20, 2007, Respondent certified under penalty of perjury
24 to the truthfulness of all statements, answers, and representations in the application. The Board
25 denied the application on September 30, 2008.

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1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Which if Done by a Licentiate Constitute Cause for Discipline)**

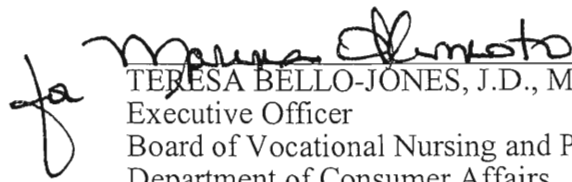
3 9. Respondent's application is subject to denial pursuant to sections 4511 and
4 480(a)(3), in that Respondent has committed acts which if done by a licentiate of the profession
5 would constitute grounds for discipline pursuant to sections 4521(f) (conviction substantially
6 related to the practice authorized by licensure) and 4521(a)(5) (use of controlled substances,
7 dangerous drugs or alcoholic beverages to the extent that such use impairs), of the Code, as more
8 particularly set forth in paragraph 8, subparagraphs a and b, above.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
12 Technicians issue a decision:

- 13 1. Denying the application of Yuki Yamashiro also known as Yuki Ginez for
14 a psychiatric technician license; and,
15 2. Taking such other and further action as deemed necessary and proper.

16 DATED: May 22, 2009
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19 
20 TERESA BELLO-JONES, J.D., M.S.N., R.N.
21 Executive Officer
22 Board of Vocational Nursing and Psychiatric Technicians
23 Department of Consumer Affairs
24 State of California
25 Complainant
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